IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-74

PIPEFITTERS LOCAL UNION NO. 562, ET AL., *Petitioners*,

v.

UNITED STATES, *Respondent*.

BRIEF OF THE NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION AS AMICUS CURIAE

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TABLE OF CONTENTS

INDEX OF AUTHORITIES CITED

CASES:

MISCELLANEOUS:

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This brief *amicus* in support of the position of the United States of America is filed by the National Right to Work Legal Defense Foundation with the consent of the parties as provided for in Rule 42(2) of the Rules of this Court.

INTEREST OF NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION

Under compulsory unionism arrangements similar to the union shop and hiring hall arrangements enforced by petitioners herein millions of American workers are compelled to join labor unions or pay union dues and fees as a condition of employment. The power and control thereby given the union and its officers over the lives and livelihood of rank and file workers inevitably leads to abuse of such power and to serious infringement of the civil liberties and individual rights of the workers involved. A most pernicious by-product of compulsory unionism is the use of compelled union dues to furnish financial support for partisan political activities and causes which the individual worker would either strongly oppose or would not willingly support with his own money if not compelled to do so.

Unfortunately, the individual worker rarely, if ever, has the resources to undertake legal action to challenge the union's actions which improperly intrude upon his personal rights. In too many cases employees are completely unaware of their rights or the legal procedures available to defend them. In almost all instances the union officials against whom complaints are directed have at their disposal the financial resources of the union, as well as the abundant talents of union legal counsel, to overpower any upstart member or group of members daring to challenge their actions or authority.

The National Right to Work Legal Defense Foundation was created for the purpose of providing legal aid to workers who suffer legal injustice or employment discrimination as a result of compulsory unionism,

and to assist such workers in protecting rights guaranteed to them under the Constitution and laws of the United States. Since its beginning the Foundation has received a constant stream of complaints from rank and file workers whose union officers, business agents and other officials and staff representatives are deeply engaged in partisan political activity and are using the union as an instrument for raising money and otherwise assisting in the election of candidates for public office. These workers feel frustrated and outraged at being compelled through their exacted dues to provide support for candidates not of their own choosing. They are, however, for all practical purposes, locked-in to the union and have no freedom of choice in regard to contributing their money to the union's involvement in the campaigns of these candidates. Only by forfeiting their jobs can they escape the compulsion thus laid upon them to provide financial support for the political activities of their union officers and representatives.

The National Right to Work Legal Defense Foundation strongly feels that by thus forcing collective political action on their rank and file members unions are acting beyond the scope of their intended authority under applicable statutes of the United States, and are imposing an unreasonable burden and restraint upon the individual worker's constitutionally protected rights of freedom of speech, freedom of conscience, freedom of association and freedom of political thought and action.

For these reasons the Foundation has a very deep interest in the issues presented in the present case, and feels that whatever disposition the Court makes of this case will profoundly affect the rights of millions of American workers.

ARGUMENT

The rank and file of any union necessarily includes persons of varying political views and party affiliation, different religious faiths and different ideological and philosophical convictions. Some are liberals, some are conservatives; some may favor school bussing, while others are strongly opposed; some are hawks, some are doves. These widely diverse individuals have not, by becoming members of the union, authorized the union or its officers to make their political decisions for them or to decide which candidates or parties deserve their support and financial assistance. Unions have, nevertheless, taken on this function for themselves and have succeeded in forging powerful political machines which support almost exclusively, as did Local 562, the candidates of one of the two major political parties. In this manner the rank and file union member is crammed into a mold of political conformity without regard to his personal predilections, and without his consent.[1]

The political activity of petitioner Pipefitters Local 562, described in the record herein, is part of a general pattern of intensive involvement by organized labor in partisan political campaigns at every level of government, national, state and local. Most, if not all, of the major labor unions in the United States have

[1] It is estimated by the Bureau of Labor Statistics that approximately 80% of all union contracts contain union security clauses compelling continued union membership or payment of union dues and fees as a condition of employment. This means that only 4 million of an estimated total of 20 million union dues payers have unfettered freedom of choice respecting union membership or financial support for the union. See, BLS Bulletin 1686, January 1971; BNA Labor Relations Expediter, Collective Bargaining Contracts, Sec. 17.

established and maintain political action committees financed at least in part by the compelled dues and fees of rank and file workers under compulsory union shop and agency shop arrangements.[2] Petitioners and their *Amici* justify these political activities on the ground that unions have a distinct set of economic interests which can best be protected by electing their *friends* to Congress and other public offices. For this reason, they argue, the prohibitions of Title 18, United States Code, Section 610 should, in respect to unions, be very narrowly applied, if indeed they should be applied at all.

The compulsory nature of Local 562's political fund is evident from the circumstances under which it was created and maintained. Local 562 exercises jurisdiction over all major jobs in a territory comprising more than half of the State of Missouri. Within this same territory are three other Pipefitters Locals, but contractors on major jobs must obtain their pipefitters through the exclusive referral system (hiring hall) maintained by Local 562. Each worker referred to a job is thus subject to the control of Local 562, whether a member of that local, or a member of one of the other three Pipefitters Locals within Local 562's jurisdiction.

The political fund maintained by Local 562 during the period here involved was entirely financed by col-

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[2] In the Amicus Curiae brief filed herein by the AFL-CIO it is stated (p. 2): "As a means of accomplishing their political objectives, many unions have set up labor political committees as an integral subdivision of the union itself. These political arms of organized labor . . . engage in educational activity directed at the union's members [and] . . . channel a flow of contributions and expenditures in connection with federal elections."

lections from members of Local 562, and members of other locals (out-of-towners) referred to jobs within Local 562's territorial jurisdiction. These collections, during respective time periods, varied from 50 cents to $1.00 for each day worked by each Local 562 member, and from $1.50 to $2.00 a day for each day worked by out-of-towners.[3] Signatures of members and out-of-towners were obtained on "voluntary contribution cards," and the assessments were regularly collected by the union steward from the individual workers on the job site and tabulated on weekly collection report sheets. From 1963 through 1966 the collections totalled $1,230,986. During the same period the fund disbursed substantial amounts to candidates for federal offices, all of whom were Democratic Party candidates. Petitioners state in their brief that among the thousands of members who made payments to the fund no contributor was found who was a Republican. (Brief p. 26)

The contention of petitioners that all of these contributions were made voluntarily and without any element of compulsion is beyond the limits of plausibility. It is essentially incredible that such a large body of hourly paid workers were so uniformly and consistently motivated politically that on their own volition over a period of several years, they chose to pay over to Local 562's political fund between $20

[3] In October 1963 the contribution rate for Local 562 members was increased from 50 cents to $1.00 a day, and for out-of-towners from $1.50 to $2.00 a day. The $2.00 a day contribution took the place of the $8.00 per month "travel card" fee required by the union rules for the privilege of working in another local's territory. Thus, in lieu of paying $8.00 a month for a travel card the out-of-towners contributed between $40 and $50 a month to the political fund.

and $50 of their earnings every month to be used exclusively to support the candidates of one of the two major political parties. It is utterly implausible that such a phenomenal response to the union's request to sign "voluntary" pledge cards bore no relationship to the fact that under the existing arrangements established by the union the employing contractors had to obtain their labor through the union, and the union exercised absolute control over job referrals.[4]

The fact that a separation was maintained between the bank account of the union and the bank account of the political fund, or that the fund was given a name which included the word "voluntary," does not alter the compulsory nature of the payments. The money was paid by the union members as an aspect of their representation by the union and the union's control over job referrals. The amount paid was directly tied to the number of days worked by the individual worker; if he worked three days he paid one sum, if he worked five days he paid another; if he were a Local 562 member he paid a fixed sum per day, and if an out-of-towner he paid a different sum, but also fixed in amount. Such a rigid and unvarying payment structure, plus the lack of any

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[4] By contrast, a bi-partisan in-plant solicitation program adopted by Aerojet General Corporation, which allows the individual employee to designate the party or candidate of his choice, produces an almost even split between the Democratic and Republican parties. In 1964, for example, contributions totalled $136,000, of which $66,100 went to Democratic Party candidates, and $63,800 went to Republican Party candidates. The average contribution was $6.85, with 20,000, or 72.5 percent of the firm's employees contributing. *Alexander, Financing the 1964 Election,* p. 105. In 1968, the average contribution was $8.27, with 61 percent of employees participating. *Alexander, Financing the 1968 Election,* p. 206.

choice in designating the party or candidate to whom the money should go, is totally inconsistent with the concept of voluntariness. The union's use of "voluntary pledge cards" was thus a mere charade—a gimmick designed to put a gloss of respectability and legality upon a compulsory payment system backed up by the coercive power of the union hiring hall.

CONSTITUTIONAL QUESTIONS

Petitioners' brief presents an extensive attack on the constitutionality of Section 610 on grounds, *inter alia*, that it abridges freedom of speech and other First Amendment rights of union members because *"if they are not permitted to pool their resources to participate in political action through the union they are thereby eliminated from participation in federal elections and to that extent from public affairs."* (Brief p. 84) Further, petitioners contend, Section 610 on its face renders meaningless the right of union members to vote and to choose their Senators and Representatives as guaranteed by Article I, Section 2 of the Seventeenth Amendment because *"this constitutionally guaranteed right of a qualified voter to make an effective choice of Congressional representatives . . . includes and requires group political action."* (Brief p. 114) Section 610 as construed and applied by the courts below, and on its face, petitioners conclude, *"requires union members to discard their only effective means of political expression involving their livelihood, the union."* (Brief p. 115)[5]

There is indeed cause for concern as to violation of the political rights of union members, but the argu-

[5] The briefs of Petitioners' *Amici* make similar attacks on the constitutionality of Section 610.

ments advanced by petitioners are the exact polar opposite of the true reasons. If this case presents any genuine questions of unconstitutional suppression of union members' rights such questions arise not by virtue of the strictures of Section 610 but rather because the union compels them to pay money to support and elect candidates not of their own choice. The freedom of association guaranteed under the First Amendment clearly protects the right of workers to form labor unions, *Thomas* v. *Collins,* 323 U.S. 516 (1945), but this is a far cry from saying that once they have formed a union they have a protected right under the First Amendment to force every worker to pay compulsory dues or assessments, and to then channel the compelled money into political campaigns. To attempt to equate the individual citizen's constitutionally protected right to vote with an equivalent right of a union to use compelled union dues for political purposes is utter sophistry; a distortion of reality and logic.

Section 610 in no way restricts the individual union member in making his own contributions to candidates, working for the election of candidates, or voting or urging others to vote for the candidates of his choice. He can join or support any political party he chooses, and he has untrammelled freedom to participate to the fullest extent in federal elections and public affairs. Section 610 places no restriction upon his political association or freedom, but merely prohibits the expenditure of union money, as well as corporate money, in connection with federal elections. There can be no question that this constitutes a valid exercise of Congressional authority to regulate fed-

eral elections. See, *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947).

In the *Mitchell* case the court considered similar constitutional attacks on the prohibitions of the Hatch Act[6] against political activity by federal employees. The appellant there was discharged from his federal job for having engaged in political work at the polls during his free time, and sought reinstatement on the ground that his discharge constituted an unlawful interference with his freedom under the First, Fifth, Ninth and Tenth Amendments to work to support political candidates of his choice. The court rejected this constitutional challenge and held that the discharge action was proper under the provisions of the Hatch Act and Civil Service rules adopted pursuant to that Act. As stated by the court:

> "The provisions of § 9 of the Hatch Act and Civil Service Rule 1 are not dissimilar in purpose from the statutes against political contributions of money. The prohibitions now under discussion are directed at political contributions of energy by Government employees.
>
> "These contributions, too, have a long background of disapproval. Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection.
>
> "The teaching of experience has evidently led Congress to enact the Hatch Act provisions. To declare that the present supposed evils of political activity are beyond the power of Congress to re-

[6] 18 USC Section 595.

dress would leave the nation impotent to deal with what many sincere men believe is a material threat to the democratic system. Congress is not politically naive or regardless of public welfare or that of the employees. It leaves untouched full participation by employees in political decisions at the ballot box and forbids only the partisan activity of federal personnel deemed offensive to efficiency. With that limitation only, employees may make their contributions to public affairs or protect their own interests, as before the passage of the Act." 330 U.S. 75, 99.[7]

In *Ex Parte Curtis,* 106 U.S. 371 (1882), the Court upheld the constitutionality of a statute which prohibited federal employees from requesting, giving to or receiving from any other employee of the government any money, property or other thing of value, for political purposes. As stated by the court:

". . . If contributions from those in public employment may be solicited by others in official authority, it is easy to see that what begins as a request may end as a demand, and that a failure to meet the demand may be treated by those having the power of removal, as a breach of some supposed duty, growing out of the political relations of the parties. Contributions secured under such circumstances will quite as likely be made to avoid the consequences of the personal displeasure of a superior as to promote the political views of the contributor; to avoid a discharge from service, not to exercise a political privilege. The law contemplates no restrictions upon either giving or receiving, except so far as may be necessary to protect, in some degree, those in the public service against exactions through fear of personal loss." 106 U.S. 371, 235.

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[7] See also, *State of Oklahoma* v. *Civil Service Commission,* 330 U.S. 127 (1947).

These same words may be aptly applied to the payments made by members of Local 562 to the "voluntary" political fund. Since the pledge cards were solicited by union officials who controlled all job referrals "it is easy to see that what begins as a request may end as a demand," and contributions made under such circumstances "will quite as likely be made to avoid the consequences of the personal displeasure of [the union officers] as to promote the political views of the contributor."

Far from infringing the union member's constitutional rights, Section 610 was designed and intended by Congress to preserve and protect his freedom of political association and expression. As pointed out in *United States* v. *CIO*, 335 U.S. 106 (1948), a major purpose of Section 610 was "to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views." 335 U.S. 106, 134-135.

> "Its legislative history indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U.S. 106, 115.

Mr. Justice Rutledge, in discussing the extension of the Corrupt Practices Act to labor organizations, concluded:

> "In one important respect the history again is clear, namely, that the sponsors and proponents

had in mind three principal objectives. These were: (1) to reduce what had come to be regarded in the light of recent experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union as well as corporate entities; and (3) *to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views.*" 335 U.S. 106, 134-135 [Emphasis added]

The inclusion of unions within the prohibitions of Section 610 was part of the statutory scheme of the Taft Hartley Act, an Act which also contains provisions authorizing unions to compel workers to become members or pay membership dues and fees as a condition of employment.[8] If, in conjunction with its federally sanctioned authority to compel payment of dues, the union can use the compelled payments for political purposes the worker's First Amendment freedoms of political association and expression are clearly sacrificed. Justice Douglas made this point most clearly in his concurring opinion in *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961), as follows:

"The collection of dues for paying the costs of collective bargaining of which each member is a beneficiary is one thing. If, however, dues are used, or assessments are made, to promote or oppose birth control, to repeal or increase the taxes on cosmetics, to promote or oppose the admission of Red China into the United Nations,

[8] 29 USC Section 158 (a) (3).

and the like, then the group compels an individual to support with his money causes beyond what gave rise to the need for group action.

"I think the same must be said when union dues or assessments are used to elect a Governor, a Congressman, a Senator or a President. It may be said that the election of a Franklin D. Roosevelt rather than a Calvin Coolidge might be the best possible way to serve the cause of collective bargaining. But even such a selective use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority. I do not see how that can be done, even though the objector retains his rights to campaign, to speak, to vote as he chooses. For when union funds are used for that purpose, the individual is required to finance political projects against which he may be in rebellion." 367 U.S. 777, 778.

In *Seay* v. *McDonnell Douglas Corporation*, 427 F2 996 CA9 (1970) a group of employees complained against the use by a union of a portion of their compelled union dues for political purposes. In its answer to the complaint the union admitted it made certain expenditures from dues money for political activities, but insisted that the amount expended was so small in relation to the total amount of dues collected as to be *de minimis*. In disposing of this contention the Court of Appeals said:

". . . . we are not impressed by appellee's 'de minimis' contentions. The diversion of the employees' money from use for the purposes for which it was exacted damages them doubly. Its utilization to support candidates and causes the plaintiffs oppose renders them captive to the ideas, associations and causes espoused by others. At the same time it depletes their own funds and

resources to the extent of the expropriation and renders them unable by these amounts to express their own convictions, their own ideas and support their own causes." 427 F2 996, 1004.

Freedom of association, it has been held, is a composite right derived from freedom of speech, freedom of assembly and the freedom to petition enumerated in the First Amendment.[9] To the extent that compulsory unionism requires a worker to make a choice between joining the union or losing his job he is thus limited in his freedom of association. The right not to join a union is a necessary corollary of the right to join, for without a right not to join there can be no such thing as a right to join. Freedom rests on choice and where choice is denied freedom does not exist. In its decision in *Board of Education* v. *Barnette*, 319 U.S. 624 (1943) the Court recognized that there are affirmative and negative sides to constitutional liberties in upholding the right of members of a religious sect to refuse to join in the oath of allegiance to the flag. The Court specifically pointed out that freedom of speech carries with it a freedom to remain silent, and that it makes no difference that the majority of the people favor the particular restriction or limitation. "The very purpose of the Bill of Rights," the Court said, "was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities

[9] "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, and therefore are united in the First Article's assurance." *Thomas* v. *Collins*, 323 U.S. 516 (1945) at p. 530.

and officials and establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." This would seem to dispose of the argument made by petitioners and their *Amici* that when a majority of the workers in a bargaining unit vote to contribute union money to political candidates the minority must accept the results of the "democratic" process.

The extraordinary privilege of exclusive representation which Congress has given unions under the National Labor Relations Act was never intended as a license for the union to force workers to make contributions to political causes. As stated by the court in *International Association of Machinists* v. *Street*, 367 U.S. 740 (1961):

> ". . . Congress contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective bargaining agreements and the costs of the settlement and adjustment of disputes. *One looks in vain for any suggestion that Congress also meant to provide the unions with a means of forcing employees, over their objection, to support political causes which they oppose.*" 367 U.S. 740, 763. [Emphasis added]

The clear answer to the attacks made upon the Constitutionality of Section 610 by petitioners and their *Amici* is that without Section 610's prohibitions on political expenditures the exclusive bargaining and union shop provisions of the NLRA could not constitutionally stand. Agreements requiring compulsory

payment of union dues, this Court has held, bear the *imprimatur* of the federal government, and their enforcement involves a sufficient element of governmental action to present constitutional issues.

> "But it is plain that when Congress clothes the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents the public interest in the exercise of that power is very great. . . . The loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the Union. But power is never without responsibility. And when authority derives in part from the Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself."
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> *American Communications Association* v. *Douds*, 339 U.S. 382, 401-402 (1950)

> "The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes private agreement to invoke the federal sanction. . . . In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed."
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> *Railway Employees Department* v. *Hanson*, 351 U.S. 228, 232 (1956)

> "If, as the State court has held, the Act confers this power on the bargaining representative of a craft or class of employees without any commensurate statutory duty toward its members, constitutional questions arise. For the representative is clothed with power not unlike that of a legislature which is subject to constitutional lim-

itations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect these rights.

Steele v. *Louisville and Nashville RR.*, 323 U.S. 192, 198 (1944)

Since Local 562 has been "clothed with legislative powers" to enforce compulsory unionism on those it represents, when that union, or any other union, in the exercise of such powers, invades or restricts the rights of the bargaining unit members there is present the requisite "state action" to invoke protection of the Constitution. The consequences were well expressed by Justice Black in his dissenting opinion in the *Street* case (*supra*):

"There can be no doubt that the federally sanctioned union-shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political, economic and ideological hopes of those whose money has been forced from them under authority of law. This injects federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the First Amendment was particularly intended to prevent. And it makes no difference if, as is urged, political and legislative activities are helpful adjuncts of collective bargaining. Doubtless employers could make the same arguments in favor of compulsory contributions to an association of employers for use in political and economic programs calculated to help collective bargaining on their side. But the argument is equally unappealing whoever makes it. The stark fact is that this Act of Congress is being used as a means to exact money from these em-

ployees to help get votes to win elections for parties and candidates and to support doctrine they are against. If this is constitutional the First Amendment is not the charter of political and religious liberty its sponsors believed it to be." 367 U.S. 740, 790.

DISCRIMINATORY APPLICATION OF SECTION 610

The petitioners argue that Section 610 does not fall with equal force on corporations and businessmen on the one hand, and union members on the other. They argue that the law allows broad freedom for businessmen to make political contributions in large amounts, and if unions are not permitted to offset such contributions they and their members suffer invidious discrimination and are thereby deprived of rights guaranteed by the Fifth Amendment. Through certain named management and business associations "which are the arch rivals of organized labor" corporations are able, petitioners assert, to evade the prohibitions of Section 610.[10]

Petitioners cite no supporting authority for this latter assertion, and pass over the subject with the comment that "It is beyond the purpose of this brief to detail the enormous sums of money business and management associations pour into federal campaigns . . . yet it would be naive to presume that business and management associations' federal campaign contributions are likely to be non-substantial."[11]

Despite these perfervid charges by petitioners there never has been any doubt that membership dues or

[10] Brief pp. 103, 104.

[11] Brief p. 107.

other fees paid by a corporation to a trade association or similar business association may not be used in any part for the purpose of political contributions or expenditures by the association. Not only would the corporate contributor and the association both be in violation of the prohibitions of Section 610, and thereby subject to criminal prosecution under that Section, but the business association would immediately and irreparably lose its status as a non-profit organization under virtually all state laws governing non-profit associations, and would also lose its tax exempt status under the Internal Revenue Code, a status which is essential to its very existence.[12] Moreover, the laws of at least 35 states forbid corporations from making political contributions in *any* elections, and in a number of other states it has been held that a political contribution by a corporation may be deemed *ultra vires* and beyond the authorized powers of the corporation. See, Library of Congress, Legislative Reference Study, February 5, 1965; Thompson on Corporations, Vol. 4, Section 2879.

Having failed to cite any authoritative source material, or any data whatsoever, to substantiate their assertions that Section 610 permits corporation funds to be channeled through trade associations into political campaigns, petitioners glibly switch over to a general assertion that political contributions by wealthy persons "and other interest groups hostile to labor" so greatly outweigh the political participation of labor that "the working class is left with no voice."[13] For

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[12] See, Internal Revenue Service, Handbook of Exempt Organizations, Section (10); Webster, The Law of Associations, 1971, Chapter VII.

[13] Brief p. 109.

this purpose they cite data extracted from studies prepared by Herbert E. Alexander entitled, Financing the 1960 Elections, Financing the 1964 Elections, and Financing the 1968 Elections, published by the Citizens Research Foundation. Petitioners contend that these studies show that a large proportion of political funds are derived from the contributions of relatively few well-to-do contributors, and suggest that this money goes into the campaigns of candidates unfriendly to organized labor.

This same theme is heavily emphasized by petitioners' *Amici,* and the brief of the AFL-CIO cites portions of Alexander's 1968 study as showing that 263 individuals with business occupations made contributions in amounts of $10,000 or more to federal election campaigns, for a total of $6.7 million, as contrasted with the $7.1 million of expenditures reported for national level labor political committees. The AFL-CIO brief concludes: *"Thus 263 businessmen balanced the efforts of some 16 million workingmen and women.*[14]

The manner in which this data is presented is deceptive and false, and the conclusions sought to be drawn from it are equally false. Petitioners would have the court believe that contributions by businessmen and wealthy persons with business connections all went to one party, thereby far outweighing labor's contributions to the other party. Dr. Alexander's tables show this to be untrue. For example, his list of contributors of $10,000 or more in 1964 shows that the great majority of these contributions were made to

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[14] Brief of AFL-CIO as Amicus Curiae, p. 22, footnote. Emphasis added.

the presidential candidate supported by organized labor. Approximately 60% of the total amount contributed by these contributors went to the labor supported candidate, and 40% to the opposition candidate.[15] The 1968 data, referred to in the AFL-CIO's brief is similarly deceptive and false. The 263 businessmen contributing $10,000 or more in 1968 did not by any means universally support the presidential candidate opposed by labor. In fact, $2.5 million of the total contributed by these 263 businessmen went to the party of the candidate supported by organized labor. Thus, instead of *balancing* the $7.1 million contributed by organized labor, as AFL-CIO states, these business contributions supplemented and strengthened labor's political effort.[16]

In any event, these contributions of individual businessmen, whether to one party or the other, are nowhere shown to be from corporate funds, or otherwise in violation of the prohibitions of Section 610. It must be assumed in the absence of any contrary evidence that they were made by the individual contributor out of his own pocket and with after-tax dollars.

The contention of petitioners that Section 610 operates to permit the channeling of corporation money

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[15] Alexander, Financing the 1964 Election, App. A, pp. 128-131.

[16] "Contrary to frequent assertions, American campaign monies are *not* supplied solely by a small handful of fat cats. Millions of people now give to politics. Even those who give several hundred dollars each number in the tens of thousands. And the traditional fat cats are *not* all of one species, allied against common adversaries. Big givers show up importantly in both parties and on behalf of many opposing candidates." Alexander Heard, The Costs of Democracy, University of North Carolina Press, 1960. Emphasis in original.

into politics while at the same time frustrating the political aspirations of the workingman is wholly without foundation in the record before the court. The statute on its face applies equally to contributions or expenditures by corporations and labor unions, and to the extent it provides any loopholes they would all seem to run in favor of permitting a far broader range of political activity to labor unions than could conceivably be allowed for corporations. Thus, for example, unions make expenditures in substantial amounts in connection with voter registration and get-out-the vote drives designed to elect their chosen candidates for federal office. These activities are not directed only toward the ranks of union members, but embrace large segments of the non-union public as well. Unions print and distribute *educational* literature designed to persuade voters to vote for union-supported candidates, and disseminate this material widely among non-union groups. The massive scale of this type of union political activity is described by Alexander Barkan, Director of the Committee on Political Education of the AFL-CIO, in an article appearing in Issues in Industrial Society, Vol. 1, No. 2, published by the New York School of Industrial Relations at Cornell University.

> "Evidence of the intensity of labor's political activity in 1968 was the 55 million pieces of printed matter distributed by national COPE to union members and an additional 60 million plus distributed by state AFL-CIO bodies and international unions. It is unlikely that any organization—including the two major parties—ever produced so much political literature in any one campaign.
>
> "Labor's nationwide registration drive put 4.6 million voters on the registration rolls. Most were

Humphrey supporters. The figure not only represents trade union members and members of their families but reflects the results of labor's registration drives in the Negro, Puerto Rican, and Mexican-American communities. *In many states, labor did the registration job for Humphrey singlehandedly; the Democratic party had abandoned the field.*

"Negro trade unionists were mobilized at a series of conferences in the spring of 1968 which led to the formation of units in 31 big cities to increase the vote in the black community. Three and a half million pieces of literature, especially prepared for the Negro community, were distributed. We were the major national organization working at registering black voters and getting out their vote. The Negro vote for Humphrey exceeded 80 percent.

"The labor movement mobilized Mexican-American farm workers; and the AFL-CIO funded an operation which included a million leaflets, radio spots, and hundreds of election day workers in California alone. Farm workers' ballot boxes in the state also exceeded 80 percent for Humphrey.

"In many states, a house-to-house canvass was conducted as part of our get-out-the vote effort, particularly in selected labor areas and in minority-group areas where there are relatively few telephones. The number of persons involved in this operation was 72,225."

The immeasurable advantage that candidates obtain from such union political activity—probably more valuable than cash contributions in many respects—is the union manpower devoted to these activities. The payment of salaries, the furnishing of office space, office equipment, telephones, travel expense, and other facilities and services necessary to this large scale

union political activity all require *expenditures* within the apparent intent of Section 610, but which are made by unions with an impunity which is not enjoyed by corporations. It is thus evident that if there is any discrimination inherent in Section 610 it is discrimination in favor of unions, rather than the other way around as petitioners contend.

The other constitutional arguments presented by petitioners are equally without foundation.

CONCLUSION

The payments collected from members of Local 562 for the political fund were exacted payments. To say that the members consented to the payments in no wise changes the nature of the transaction. The money was *raised* by the union, and was therefore union money, and the court below properly held that its expenditure in the form of political contributions violated the prohibitions of Section 610.

Section 610 represents a valid exercise of congressional authority to regulate federal elections, and imposes no unreasonable restraint upon the constitutional rights of unions or their members. Quite to the contrary, Section 610 is designed to preserve and protect the constitutional rights of the rank and file union member. The ruling of the court below should therefore be affirmed.

Respectfully submitted,

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